

Date: 20131015

File: 561-02-433

Citation: 2013 PSLRB 127



*Public Service
Labour Relations Act*

Before a panel of the Public
Service Labour Relations Board

BETWEEN

SAMEH BOSHRA

Complainant

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as

Boshra v. Canadian Association of Professional Employees

In the matter of a complaint made under section 190 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: John G. Jaworski, a panel of the Public Service Labour Relations Board

For the Complainant: Himself

For the Respondent: Fiona Campbell, counsel

Decided on the basis of written submissions,
filed June 14, 2013.

REASONS FOR DECISION

I. Complaint before the Public Service Labour Relations Board

[1] On January 19, 2010, Sameh Boshra (“the complainant”) filed a complaint against the Canadian Association of Professional Employees (“the CAPE” or “the respondent”) under paragraph 190(1)(g) of the *Public Service Labour Relations Act* (“the Act”). The details of his complaint are that the CAPE refused to refer to adjudication his termination grievance despite repeated assurances in August and September 2009 by its representative.

[2] On February 8, 2010, the CAPE filed its response to the complaint, denying that it had breached paragraph 190(1)(g) of the *Act* and stating further that, at all times, it has fully met its duty to fairly represent the complainant.

II. Summary of the evidence

[3] At all material times, the complainant was employed by Statistics Canada (“the employer”). On July 31, 2009, he was informed by his employer that he was being terminated from his employment. At the time of his termination, the complainant was a probationary employee.

[4] The complainant filed a grievance without the assistance of the CAPE; however, shortly after that, the CAPE assigned a labour relations officer to represent him in the grievance.

[5] A grievance hearing was held with the employer, and on October 2, 2009, the grievance was denied. Subsequent to the denial, the respondent undertook a review of the complainant’s grievance and determined that it was not in its collective interest to continue providing representation to the complainant for his grievance. As such, the CAPE advised the complainant that it would not refer the grievance to adjudication.

[6] Despite the decision by the CAPE to not refer the complainant’s grievance to adjudication, it advised the complainant that he could refer it by himself as he did not require the approval and representation of the CAPE to pursue his grievance.

[7] The complainant’s grievance was heard by an adjudicator of the Public Service Labour Relations Board (“the Board”) in June 2010 and January and June 2011, and a decision was rendered on July 27, 2011, as *Boshra v. Deputy Head (Statistics Canada)*, 2011 PSLRB 97. The adjudicator held that he had no jurisdiction to hear the complainant’s grievance against his termination as it was a rejection on probation. The

complainant sought judicial review of that decision, which was dismissed by the Federal Court.

[8] This complaint was filed on January 19, 2010, and the respondent filed its written response on February 8, 2010. On March 9, 2010, the complainant wrote to the Board with respect to the production of documents. He stated as follows in part:

...

I submitted requests for personal information and records to the bargaining agent, the Canadian Association of Professional Employees, under the Personal Information Protection and Electronic Documents Act on November 20, 2009. I received a reply from the bargaining agent dated December 2, 2009 asserting exemption from the Act. The bargaining agent refused to co-operate with the request for documents. A complaint has since been forwarded to the Office of the Privacy Commissioner and is currently being investigated.

Given this fact, I wish to request that PSLRB exercise its discretion under Section 40.(1)(h) of the Public Service Labour Relations Act to compel the Respondent to produce, immediately and in full, the documents requested of them. I submit that failing to do so, given the Respondent's refusal to co-operate with my requests for documents, seriously impedes my ability to adduce evidence to establish my case.

...

[9] On March 10, 2010, the respondent, through its legal counsel, wrote to the Board, copying the complainant, responding to the complainant's request of March 9, 2010, stating that the complainant had not specified what documents he was looking for and if and when the complainant identified said documents, it wished an opportunity to make submissions.

[10] On March 11, 2010, the Board wrote to the parties, confirming receipt both of the complainant's letter of March 9, 2010 and of counsel for the respondent's letter of March 10, 2010, and it requested that the complainant provide his position vis-à-vis the March 10, 2010 letter by March 23, 2010.

[11] On March 23, 2010, the complainant wrote to the Board, addressing the letter of March 10, 2010 from counsel for the respondent. The complainant again referred to the letter he sent directly to the CAPE on November 20, 2009. He stated that the

CAPE's response to the November 20, 2009 letter was to deny the request. He stated that the CAPE refused and continued to refuse to produce the documents as requested in the November 20, 2009 correspondence and reiterated to the Board his request that the Board exercise its discretion under paragraph 40(1)(h) of the *Act*.

[12] On April 6, 2010, the Board wrote to the parties and requested that the respondent provide its position vis-à-vis the complainant's letter of March 23, 2010 by April 13, 2010.

[13] On April 12, 2010, counsel for the respondent wrote to the Board, setting out its position regarding the complainant's letter of March 23, 2010. The respondent provided a copy of the complainant's letter of November 20, 2009, which was referenced in the complainant's previous two letters to the Board. In the November 20, 2009 letter, the complainant requested that the CAPE provide to him copies of all personal information and records as defined under the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 ("PIPEDA"); his letter which reads in part as follows:

- *about me including but not limited to records naming me explicitly by given name, surname, and/or any name identifiable with my person legally or otherwise;*
- *about me including but not limited to records where I am identified by alias, for example an employee number, an email address, abbreviated and/or incorrect spellings and/or initials of names identifiable with my person;*
- *about me including but not limited to records where I am identified by inference, for example as the member, the employee, the recruit, the EE, the grievor and/or the complainant;*
- *about me substantively; and*
- *discussing matters about me and/or my activities including but not limited to records naming me explicitly and/or referring to me substantively as above;*
- *discussing matters arising from requests, inquiries and/or complaints to the organization either to/from me and/or to/from any other individual, organization and/or institution covered under the Act;*
- *discussing matters relating to any representations and/or deliberations regarding representation by the organization*

about me and/or on my behalf to any other individual, organization and/or institution covered under the Act;

- sent to/by/on behalf of and/or received to/by/on behalf of and/or in the possession physically and/or electronically by:

all management and staff from Labour Relations, including but not limited to, Allan Stead, Aleisha Stevens, Lionel Saurette, Bertrand Myre and Claude Archambault; and

all management and staff from the National Executive Committee, including but not limited to , Jose Aggrey, Claude Poirier, Jean Ouellette, Claude Danik and Gregory Phillips

at any time inclusively between August 1, 2008 up to and including the date this request is received by the individual or their respective office.

...

I wish to request copies of all electronic mail messages to/from Allan Stead and Aleisha Stevens from August 1, 2008 to September 30, 2008.

...

[14] In the letter of April 12, 2010, counsel for the respondent took the position that the complainant's request under paragraph 40(1)(h) of the Act was vague, that it was overly broad; that it encompassed documents that are privileged and/or confidential, and that it constituted an abuse of process as the documents requested were already in the complainant's possession. Counsel for the respondent went on to state that the respondent was willing to provide any documents that were in its possession, that were not already in the complainant's possession and that were not subject to privilege, if he would identify them with more specificity. Counsel for the respondent also provided a copy of the CAPE's correspondence dated December 2, 2009 in which the CAPE had replied to the complainant's letter of November 20, 2009. The response reads in part as follows:

...

The Canadian Association of Professional Employees (CAPE), as an organization which does not participate in commercial activity, is not covered by the federal Personal Information Protection and Electronic Documents Act (PIPEDA).

Accordingly, your request for copies of all personal information and records held by CAPE is denied.

As a matter of practice, CAPE does not provide members or ex-members with copies of their files. This being said, as is the case for almost all documents contained in our representation files, your files contain documents that were either provided by you, provided by the employer with a copy having been provided to you and documents (mostly emails) exchanged between you and CAPE. You should therefore have a copy of all of these documents. However, if you wish to request specific documents that do not fit in this category, please provide me with the proper information and CAPE will consider your request.

[15] On April 29, 2010, the Board wrote to the parties and instructed them as follows:

...

On the complainant's request for disclosure

*The complainant is asked to provide, **by no later than May 21, 2010**, a revised list of the requested documents to the respondent that:*

- *are relevant to CAPE's representation on the complainant's termination grievance;*
- *are from the period of his first contact with the bargaining agent on his termination up until the date of the filing of the complaint;*
- *are not already in his possession;*
- *are not subject to solicitor- client privilege; and*
- *identify the specific document requested.*

*After receiving the revised list of requested documents, the respondent is to review the list. If there are any remaining concerns about the scope of the requested documents, the relevance of any requested documents, or questions of privilege, the respondent can raise those matters by correspondence to the board [sic] **by May 31, 2010**. The complainant will then have an opportunity to respond to any further submissions by the respondent.*

[Emphasis in the original]

[16] On May 21, 2010, the complainant wrote to the Board and stated as follows:

...

With respect to the Board's April 29 request to provide a revised list of requested document to the respondent: I believe the request for documents I provided the respondent in November 2009 is consistent with the Personal Information and Electronic Documents Act (PIPEDA). My understanding was that the Board's power to compel a party to produce documents was wider than the PIPEDA provisions. I was advised two weeks ago that a Senior Privacy Investigator at OPC is currently reviewing my November 2009 request for documents from CAPE. If the Board does not wish to compel the production of documents from CAPE per my November 2009 letter to CAPE at this time, I again respectfully request the Board place this complaint file in abeyance pending guidance from the (OPC) related to this issue.

...

[17] On May 27, 2010, counsel for the respondent wrote to the Board in response to the complainant's correspondence of May 21, 2010, and stated as follows:

...

... CAPE submits that it would be inappropriate to hold this complaint in abeyance pending the decision of the OPC regarding Mr. Boshra's November 2009 request for documents from CAPE. In the Board's letter dated April 29, 2010, Mr. Boshra was given the opportunity to make a request for relevant, non-privileged documents which are not already in his possession and he has declined to do so. The OPC's decision regarding the November 2009 request is irrelevant to this matter.

...

[18] On May 28, 2010, the Board wrote to the parties and advised them that the complainant's request to hold the matter in abeyance pending guidance from the Office of the Privacy Commissioner was denied by the panel of the Board seized with the matter.

[19] On July 9, 2010, the Board wrote to the parties and advised them that an oral hearing would be scheduled for the matter and that, in due course, the parties would be informed.

[20] On September 8, 2011, the Board wrote to the parties and advised them that it had tentatively scheduled the hearing of this matter from March 19 to 21, 2012 in

Ottawa, Ontario. The Board requested that the parties advise it no later than September 28, 2011 if they were not available for those dates. On September 16, 2011, counsel for the respondent wrote to the Board and confirmed that the respondent would be available for those days. No response was received from the complainant.

[21] On September 30, 2011, the Board wrote to the complainant and advised that the hearing was scheduled from March 19 to 21, 2012 in Ottawa and that the hearing days were considered final.

[22] On February 15, 2012, the Board sent the parties the "Notice of Hearing," informing them that the hearing of this matter would take place commencing March 19, 2012 at 09:30 on the seventh floor of the C.D. Howe Building, 240 Sparks Street, West Tower, Ottawa, Ontario, and continuing until March 21, 2012.

[23] On March 5, 2012, counsel for the respondent wrote to the complainant as follows:

...

I am writing further to our telephone conversation of last week in which you mentioned that you intend to pursue your request for disclosure from CAPE that was originally made on March 23, 2010. I note that the Board has already dealt with this request. By letter dated April 29, 2010, the Board asked you to provide CAPE with a revised list of requested documents that met certain criteria set out in a letter by May 21, 2010. We have never received such a revised request.

Although it is our client's position that this matter has already been dealt with, if you nevertheless intend to raise it again, we would suggest that you consider requesting the Board for a pre-hearing conference so that it can be dealt with in advance of the hearing. Our client wishes to insure that there are no obstacles to the hearing proceeding in an expeditious manner on March 19, 2012, as scheduled.

...

[Sic throughout]

[24] On March 7, 2012, the complainant wrote to the Board, as follows:

...

I am writing further to the referenced matter (Reference No.: 561-02-433). Specifically, I wish to address a number of preliminary matters that have yet to be addressed two weeks prior to scheduled hearings.

Evidence

Further to correspondence with the respondent and the Board between December 2009 and June 2010, the issue of production of records requested from the respondent has yet to be addressed. As noted in my letter to the Board dated May 21, 2010, I requested that if the Board did not wish to exercise its powers under section 40 of the PSLRA to compel the production of evidence requested, that the matter be held in abeyance pending the outcome of a related complaint I had filed with the Office of the Privacy Commissioner (OPC) on January 5, 2010. After a number of calls between November 2011 and February 2012, I received feedback on February 20, 2012 that the OPC could not locate any record of my January 5, 2010 complaint and was informed this was the reason it had not been dealt with. As a result, I am left with no choice but to once again request that the Board exercise its power to compel production of the requested records from the respondent prior to proceeding with hearings. The documents would serve as critical evidence and proceeding without them would be prejudicial to the complainant's case.

...

[25] On March 9, 2012, the Board wrote to the parties and stated as follows:

...

Mr. Boshra's letter has been brought to the attention of the Board member assigned to this matter and I am directed to advise the parties as follows:

1. Production of documents:

The complainant is reminded that, as per Martine Paradis' letter of April 29, 2010, he is directed to provide to the respondent (with a copy to the Board) a revised list which specifies the documents he is requesting to have produced that:

- are relevant to CAPE's representation on the complainant's termination grievance;*
- are from the period of his first contact with the bargaining agent on his termination grievance up until the date of the filing of the complaint;*

- *are not already in his possession;*
- *are not subject to solicitor-client privilege; and*
- *identify the specific document requested.*

...

[Emphasis in the original]

[26] On March 14, 2012, the complainant wrote to the Board, as follows:

...

Production of Documents

I believe the records request as submitted to the respondent on November 20, 2009 sufficiently specifies the records requested. The parties, dates and the nature of the records requested- including the matters they relate to, are clearly specified. If the respondent is having any difficulty understanding any part of the request, it should specify.

...

The November 20, 2009 records request already indicates the respondent may exclude most e-mail communications in which I was copied, for the exception of a two-month period for which my records appear to be incomplete.

...

[27] On March 15, 2012, the Board wrote to the parties and stated as follows:

...

1. Production of documents

The issue of whether specific documents should be produced can be raised as a preliminary issue at the hearing.

...

[28] In his correspondence of March 7, 2012, the complainant also requested permission from the Board to record the hearing as it proceeded. In its response to the complainant on March 9, 2012, the Board advised the complainant that it was not the Board's policy to record its proceedings and that the complainant's request to have the hearing recorded was denied. In his correspondence of March 14, 2012, the complainant advised the Board that he was refusing to proceed with a hearing without

an assurance that a machine recording would be made and would be available to the parties following the hearing. In its correspondence of March 15, 2012 to the parties, the Board restated that it would not record the hearing; nor would it permit the parties to record the hearing.

[29] On March 16, 2012, the complainant responded to the Board's correspondence of March 15, 2012. With respect to the issue of the production of documents, the complainant stated that he had "... no objection to addressing the issue of production at a preliminary hearing." With respect to the recording of the hearing, the complainant stated that "[i]t is at the Board's discretion to physically enforce its arbitrary decision, if it wishes to do so." The complainant then went on to state that he would "... not proceed with a hearing prior to settling the issues of production and witnesses as doing so would effectively deny [him] the opportunity to adduce relevant evidence in support of [his] case."

[30] Also on March 16, 2012, the complainant served the Board with a "Notice of Constitutional Question" with respect to the issue of recording the proceedings.

[31] The hearing, scheduled for March 19 to 21, 2012 at Ottawa, Ontario, was postponed, and the Board directed that the matter of the complainant's request to record the proceedings proceed by way of written submissions.

[32] The Board issued its decision with respect to the preliminary issue as set out earlier on August 1, 2012, in *Boshra v. Canadian Association of Professional Employees*, 2012 PSLRB 78 ("*Boshra 2012*"). For reasons set out in that decision, the Board upheld its decision not to record or permit the parties to record the hearing of the complaint. In addition, the Board also addressed the disclosure request of the complainant as follows:

...

[27] The second issue covered in this decision concerns the complainant's request for the disclosure of documents. He first requested disclosure from the respondent in a letter dated November 20, 2009. Following the filing of this complaint in January 2012, the complainant sought the assistance [sic] of the Board in securing disclosure, referring to the November 20, 2009 letter. A series of exchanges ensued between the parties and the Board on that issue, including a fairly lengthy letter from the respondent dated April 12, 2010 that raised a number of concerns about the

scope and content of the request. A Board member was asked to review the parties' positions and to provide further direction. On April 26, 2010, the Board member indicated that the complainant should be directed to provide to the respondent a revised list of documents that:

- i) were relevant to the CAPE's representation for his termination grievance;
- ii) were from the period of his first contact with the CAPE about his termination until the date on which the complaint was filed;
- iii) were not already in his possession;
- iv) were not subject to solicitor-client privilege; and
- v) identified the specific document requested.

[28] The list was to be provided within two weeks of the date of the letter.

[29] The letter was sent to the complainant on April 29, 2010.

[30] Despite a number of reminders, the complainant did not provide the respondent with a revised list. Indeed, in a communication to the Board shortly before the hearing, reminding him of the April 2010 direction, the complainant indicated that he thought that his request was adequately captured in his original November 2009 letter.

1. Reasons

[31] My view is that it is not open to the complainant to simply express a preference to return to a request of the scope and kind he submitted in November 2009.

[32] The parties made a series of representations on this issue. A Board member considered it and issued a direction, which seems to me to have dealt adequately with the issue. I reiterate it as the appropriate basis for a request for disclosure from the complainant. Had the hearing continued on March 19, 2012, I would have summarized this history, as I have in this decision, and would have made the same ruling.

[33] For all of the above reasons, the Board makes the following order:

...

[35] *The complainant is directed to provide to the respondent, no later than two weeks from the date of this decision, a revised list of requested documents that:*

- *are relevant to the CAPE's representation for the complainant's termination grievance;*
- *are from the period of his first contact with the CAPE about his termination grievance until the date on which the complaint was filed;*
- *are not already in his possession;*
- *are not subject to solicitor-client privilege; and*
- *are specifically identified.*

No further hearing will be scheduled until the complainant has complied with this direction.

...

[33] The complainant sought judicial review of *Boshra 2012* by way of application to the Federal Court in File No. T-1623-12. On November 23, 2012, the Federal Court dismissed the complainant's judicial review application. In ordering the dismissal of the application, the Court noted that the Federal Court of Appeal was the proper jurisdiction to seek judicial review of a Board decision and that the complainant did not file any material responding to the motion seeking dismissal.

[34] The complainant filed an appeal of the decision in Federal Court File No. T-1623-12. On February 14, 2013, the Federal Court of Appeal dismissed the complainant's appeal. In ordering the dismissal of the appeal, the Court noted that the appeal was filed out of time, that the complainant did not seek an extension of time to file the appeal and did not respond to the motion by the respondent to dismiss the appeal, and that there was no arguable case to support an order extending the time to bring the appeal.

[35] On February 26, 2013, counsel for the respondent wrote to the Board and suggested that the matter be scheduled on a priority basis given that it had been outstanding for three years. Counsel for the respondent pointed out that the complainant had a pattern of commencing proceedings, which he then fails to pursue, which was the case with the applications to the Federal Court and Federal Court of Appeal in this specific matter with respect to *Boshra 2012*. Counsel for the respondent

also stated that the complainant had filed two complaints with the Board on May 3, 2012 and then did not provide any response when the respondent moved to have them dismissed as untimely. The respondent pointed out that by commencing proceedings, the complainant requires the respondent to spend time and money defending and moving to dismiss the claims. The February 26, 2013 letter from counsel for the respondent was shown as being copied to the complainant.

[36] On June 13, 2013, the Board wrote to the parties, setting out much of the history of this matter as was already set out in this decision. The Board further stated and instructed as follows:

...

The complainant has neither complied with nor sought a stay of the April 29, 2010 order; not at the time of its issuance three years ago nor at any of its subsequent reiterations, culminating in the Board's decision of August 2012.

The respondent, in a letter dated February 26, 2013, has requested that this matter be scheduled.

In light of the wording of the Board's decision of August 1, 2012, and the complainant's failure to comply with that order, the parties are requested to provide what submissions they may have with regard to the respondent's request.

...

[37] The respondent was required to file its submissions by June 21, 2013, the complainant was required to file his submissions by June 28, 2013, and the respondent was to provide any reply to the complainant's submissions by July 5, 2013.

[38] The Board's letter of June 13, 2013 was tracked by Canada Post, and it was reported back to the Board that it was signed for by the complainant on June 17, 2013.

[39] The respondent filed written submissions on June 14, 2013.

[40] The complainant did not file any submissions; nor did he request any extension of time to file his submissions.

III. Summary of the arguments

A. For the respondent

[41] In its written submissions dated June 14, 2013, the respondent stated that, in light of the failure of the complainant to comply with the orders of the Board, it was withdrawing its request to the Board to schedule the hearing.

[42] The respondent further submitted that if the complainant or a representative for the complainant failed to provide submissions on this matter within the deadlines set by the Board, the complaint should be dismissed on the basis that it has been abandoned.

[43] The respondent submitted that the complainant has been aware of the requirement to provide the specifics of his request for particulars with respect to the documents for more than a year and that he has failed to take any steps to comply with this requirement so that his complaint can move forward. The respondent stated that the delay is prejudicial to it.

[44] The respondent submitted that the proceeding should not be allowed to continue indefinitely if the complainant has demonstrated that he is not willing to comply with the Board's directions.

IV. Reasons

[45] On November 20, 2009, before the filing of this complaint, the complainant sent a written request to the respondent for documents, allegedly pursuant to the *PIPEDA*. The respondent replied to that request on December 2, 2009, stating that it was not bound by the *PIPEDA*; however, it stated that it would be prepared to consider the complainant's request if he were more specific in identifying the documents he desired.

[46] After the complaint was filed the complainant wrote to the Board, on March 9, 2010, with respect to his request for documents dated November 20, 2009. On March 10, 2010, counsel for the respondent replied to that request, which set in motion a series of written submissions about the request, which culminated in the Board making the following order on April 29, 2010:

...

The complainant is asked to provide, by no later than May 21, 2010, a revised list of the requested documents to the respondent that:

- *are relevant to CAPE's representation on the complainant's termination grievance;*
- *are from the period of his first contact with the bargaining agent on his termination up until the date of the filing of the complaint;*
- *are not already in his possession;*
- *are not subject to solicitor- client privilege; and*
- *identify the specific document requested.*

After receiving the revised list of requested documents, the respondent is to review the list. If there are any remaining concerns about the scope of the requested documents, the relevance of any requested documents, or questions of privilege, the respondent can raise those matters by correspondence to the board [sic] by May 31, 2010. The complainant will then have an opportunity to respond to any further submissions by the respondent.

[Emphasis in the original]

[47] This matter has been outstanding since January 2010. The complainant made a request for documents to the Board in March 2010, subsequent to which submissions were made and an order was issued on April 29, 2010. The complainant has never complied with this order. In fact, on May 21, 2010, the deadline as set by the Board in its order of April 29, 2010, the complainant wrote to the Board and stated that he believed that his request contained in his letter of November 20, 2009 was consistent with the *PIPEDA* and that if the Board did not wish to compel document production from the CAPE, the Board should hold his file in abeyance until the Office of the Privacy Commissioner ruled on his request. The Board denied this request.

[48] Again, on March 7, 2012, after the matter was scheduled for a hearing in Ottawa, Ontario, commencing March 19, 2012, the complainant wrote to the Board, suggesting that the issue of the production of documents from the respondent had not been addressed. The Board wrote back to the complainant, reiterating the order of April 29, 2010. The complainant in turn wrote back to the Board, stating that he felt his original request of November 20, 2009 was appropriate and that if the respondent was having any difficulty understanding it, it should so specify. This suggestion by the

complainant is disingenuous. The respondent specified its position on several occasions to the complainant before the Board's order of April 29, 2010, that set out the particulars which the complainant was to provide for the respondent to consider the request for documents.

[49] The hearing did not proceed on March 19, 2012, as the complainant raised an issue about voice recording the hearing. The panel of the Board seized with the matter at that time ordered the filing of written submissions and issued *Boshra 2012* on August 1, 2012. As part of the decision, the panel of the Board addressed the outstanding issue of the document production, which is set out at paragraph 32 of this decision.

[50] The complainant filed a judicial review application of *Boshra 2012*; however, that application was filed incorrectly in the Federal Court rather than in the Federal Court of Appeal. The respondent moved to dismiss the application, and the complainant filed no material. The Federal Court dismissed the judicial review application, and the complainant then appealed that decision to the Federal Court of Appeal. The respondent moved to strike that appeal, and the complainant again did not file any material. The appeal was dismissed.

[51] When the appeal process before the Federal Court and Federal Court of Appeal had been exhausted, the Board sought submissions from the parties, given the wording on document production found at paragraph 35 of *Boshra 2012* (cited at paragraph 32 of this decision). The respondent filed written submissions, while the complainant did not respond whatsoever.

[52] The respondent has argued that the complainant has a pattern of commencing proceedings which he fails to pursue, and has requested that the Board dismiss this complaint as being abandoned. I agree.

[53] Subsection 40(2) of the *Act* states as follows:

40. (2) The Board may dismiss summarily any application or complaint that in its opinion is frivolous or vexatious.

[54] Section 41 of the *Act* states as follows:

41. The Board may decide any matter before it without holding an oral hearing.

[55] The matter of particulars to satisfy a document production request made by the complainant was subject to a Board order made almost three-and-a-half years ago, on April 29, 2010. That decision was reiterated to the complainant and was set out in *Boshra 2012*. The complainant launched a judicial review of *Boshra 2012* and then an appeal of the judicial review decision when it was dismissed. On both occasions, he commenced proceedings in which he failed to file material. After the appeal processes for *Boshra 2012* were complete, the Board sought his input on the wording of paragraph 35 of *Boshra 2012* (see paragraph 32 of this decision), and again, the complainant failed to file any material.

[56] It is clear that paragraph 35 of *Boshra 2012* was worded in the manner it was to facilitate the complainant's request for production of documents. The failure of the complainant to comply with the order should not be permitted to allow him to abuse the process and delay the proceeding in perpetuity. It is clear from the complainant's failure over more than three-and-a-half years to comply with the Board's order, from his commencing of the judicial review application and appeal in the Federal Court and Federal Court of Appeal respectively, and from his lack of response to the Board's request for submissions, that he is not acting in good faith. I find that his actions in this regard demonstrate that his actions in pursuing this complaint are both frivolous and vexatious, and as such, I exercise my discretion to dismiss the complaint without an oral hearing.

[57] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[58] The complaint is dismissed.

October 15, 2013.

**John G. Jaworski,
a panel of the Public Service
Labour Relations Board**